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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,347	10/09/2001	William Harrison Zurn		5750

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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/972,347

Applicant(s)

ZURN, WILLIAM HARRISON

Examiner

Alexandra K Pechhold

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23,24 is/are allowed.
- 6) ☒ Claim(s) 15, 19, 20, and 22 is/are rejected.
- 7) ☒ Claim(s) 16-18 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 15, 19, 20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaha et al (US 5,439,313).**

Regarding claim 15, Blaha discloses a vehicle (10) and a work module disclosed as spray patch application system in claim 1, which is adapted to fit on the vehicle as recited by the mounting on the rear portion of the vehicle frame in claim 10. A means for robotically moving the work module between a working position and inoperative position is seen as robotic control arm system (61) which Blaha states has control arm tubes as part of the overall operator control system (Col 9, lines 13-26). A means for controlling the means for robotically moving and for controlling actuation of the at least one work module is disclosed as the control system (210) which includes a host computer (212) and microprocessors (214, 216) (Col 12, lines 19-24). Blaha fails to disclose at least one slot on the vehicle defined by predetermined dimensions designed to receive the work module. But Blaha does note in claim 10 that the spray patch application system is adapted to fit on the vehicle by being mounted on the rear portion of the vehicle frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the machine of Blaha to include at least

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one slot on the vehicle defined by predetermined dimensions designed to receive the spray patch application system, since Blaha states in claim 10 that the spray patch application system is mounted on the rear portion of the vehicle frame, and modifying this mounting to include a slot to receive the spray patch application system merely requires altering the mechanical connection between the components to secure the application system in place on the frame.

Regarding claim 19, Blaha discloses an engine in column 8, line 3.

Regarding claim 20, Blaha discloses at least one hopper seen as bins (112, 114) (Col 11, lines 1-19), and means for conveying the repair material disclosed as auger (120) located at the bottom of each bin (112, 114) to carry aggregate (107) to the exit port (115) (Col 11, lines 20-24).

Regarding claim 22, Blaha discloses that liquid asphalt emulsion is stored in tanks (122, 123) which is supplied to the nozzle with air pressure or a pump and then combined with the aggregate near the end of spray path nozzle (94) as the aggregate leaves the nozzle (Col 11, lines 38-46).

Allowable Subject Matter

3. Claims 23 and 24 are allowed.
4. Claims 16-18 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Restriction Argument

5. Applicant argues that it would not be an undue burden upon the Office to examine all of the claims in the instant application together. Yet the Examiner maintains the restriction requirement, since the non-elected claims are directed at a method, and the restriction is proper since the method can be practiced by a machine or system other than that recited in Group I and is not restricted to that machine. Examiner's claim rejections are directed only to the elected Group I.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600